

**BEFORE THE
NATURAL RESOURCES COMMISSION
OF THE
STATE OF INDIANA**

IN THE MATTER OF:

READOPTION OF 312 IAC 16,)	Administrative Cause
WHICH GOVERNS)	Number: 10-003G
OIL AND GAS)	
)	(LSA Document #10-33(F))

RECOMMENDATION FOR FINAL ACTION ON READOPTION OF RULE

A. INTRODUCTION

For Commission consideration is the readoption of 312 IAC 16, which governs oil and gas. This article includes 312 IAC 16-1 (Definitions), 312 IAC 16-2 (General Provisions), 312 IAC 16-3 (Permits), 312 IAC 16-3.5 (Annual Well Fees), 312 IAC 16-4 (Bonding in Addition to Annual Well Fee) and 312 IAC 16-5 (Well spacing). The text of 312 IAC 16 can be accessed through the Legislative Services Agency Internet site at <http://www.in.gov/legislative/iac/T03120/A00160.PDF>.

In April 2002, the Natural Resources Commission approved delegations of authority with respect to readoptions. Where the rules are being readopted in their current form without amendments, the Director of the Division of Hearings may approve preliminary action. However, the Commission retains authority to take final action on recodifications.

The rules codified under 312 IAC 16 are proposed for readoption without amendment. The Director of the Division of Hearings approved preliminary action on January 1, 2010. It is the standard practice to readopt rules by article, and 312 IAC 16 is now submitted for consideration as to final action.

B. READOPTION ANALYSIS REQUIRED UNDER IND. CODE § 4-22-2.5-3.1

Herschel McDivitt, Director of the Division of Oil and Gas, appointed James AmRhein as the Small Business Regulatory Coordinator for this rule readoption. AmRhein provided the following analysis of potential impacts to small business for the proposed readoption of 312 IAC 16:

READOPTON OF RULES: SMALL BUSINESS ANALYSIS

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The continued need for the rule.

The rule is necessary for the continued implementation of the regulatory programs administered by the Department of Natural Resources, Division of Oil and Gas, authorized under the statutory authority of IC 14-37.

312 IAC 16-1; Definitions - provides definitions with applicability to IC 14-37 and 312 IAC 16.

312 IAC 16-2; General Provisions - addresses general provisions which include preparation of forms required under this article and the manner in which informal hearings may be requested and conducted.

312 IAC 16-3; Permits – Requires permits be obtained for certain purposes and also establishes permit application requirements. The rule also addresses permit duration, the permit transfer process and outlines the requirements for revoking permits.

312 IAC 16-3.5; Annual Well Fee – This rule provides the well fee assessment amount and reporting requirements.

312 IAC 16-4; Bonding in Addition to Annual Well Fee – Establishes when additional bonding is required, bond types and bond amounts accepted by the division, when bonds can be released, and the provides for the forfeiture or cancellation of a bond.

312 IAC 16-5; Performance Standards and Enforcement – governs the location and spacing of wells, drilling unit sizes, provides protection of coal resources, determines criteria for well construction, provides criteria for general well maintenance, establishes the criteria for conducting mechanical integrity tests, outlines reporting requirements, describes the manner in which a well must be plugged and abandoned, addresses the manner in which an operator may obtain a temporary abandonment authorization, and establishes the requirements for issuing and appealing notices of violation and civil penalties. The rule also provides for requirements for spills, spill containment and soil remediation caused by the release of oil or saltwater.

The nature of any complaints or comments received from the public, including small businesses, concerning the rule or the rule's implementation by the agency.

The nature of complaints from landowners:

- Wells can sit idle for many years because of the TA rule
- The length of time it can take for enforcement action to escalate
- Spacing requirements for Trenton field wells because of concerns that “their” gas might be taken from them.

The nature of complaints from small businesses:

- That long string casing must have cement circulated to the surface
- UTM coordinates are required on permit applications
- Surety bonds are difficult to obtain
- The method for determining coal seams identified for plugging protection
- That vegetation on firewalls is considered a fire hazard
- Rain water must be properly disposed of into tanks or a Class II well

The complexity of the rule, including any difficulties encountered by:

(A) the agency in administering the rule; or

The division has administered this rule for several years and consequently, experience very few difficulties in actually managing programs governed by the regulation. Although the rule is quite complex, the division employs staff with experience and specialized knowledge required to properly administer this rule.

(B) small businesses in complying with the rule.

Small businesses generally have a good understanding of the rule and rarely encounter difficulties following division regulations. However, weather and ground conditions can sometimes preclude small business owners from complying with enforcement issues but fortunately, these issues are usually resolved by closely communicating with division personnel.

The extent to which the rule overlaps, duplicates, or conflicts with other federal, state, or local laws, rules, regulations, or ordinances.

This rule only slightly overlaps or duplicates other federal or state laws. The division works closely with the Indiana Department of Environmental Management (IDEM) in regards to spills, spill reporting, and remediation. The division has entered into a Memorandum of Understanding with IDEM concerning these spill issues so that the agency with regulatory authority can be determined.

The division received primary enforcement authority from the USEPA in 1991 concerning Class II wells. For these types of wells, 312 IAC 16 generally mirrors the EPA rule except in certain instances where the state has chosen to be slightly more restrictive.

The length of time since the rule was last reviewed under this section or otherwise evaluated by the agency, and the degree to which technology, economic conditions, or other factors have changed in the area affected by the rule since that time.

This rule was recodified in 2004 and non-substantive changes were made to the rule in 2005.

The division continually reviews 312 IAC 16 as a matter of business and to ensure its overall effectiveness.

Drilling technology and computer technology have improved in such a way as to allow more oil to be produced from fewer boreholes, which in turn reduces the environmental footprint. Economic conditions have improved to the point that many old stripper wells which were once thought to be of little to no value, have now become financially viable.

C. NOTICE OF INTENT TO READOPT AND RECOMMENDATION FOR FINAL ACTION

On January 13, 2010, a “Notice of Intent to Readopt” 312 IAC 16 was posted to the *Indiana Register* at 20100113-IR-312100033RNA as anticipated by Ind. Code § 4-22-2.5-2 and Ind. Code § 4-22-2.5-4. The notice indicated the intention to readopt the entirety of 312 IAC 16 without changes. The notice also provided that a person had 30 days to submit a written request to the Natural Resources Commission, through the Small Business Regulatory Coordinator, seeking to have a particular section of the rule readopted separately. If such a request had been made, the Commission would have been required to complete the full rule adoption process for the section requested to be readopted separately.

In this instance, no written request has been received. The Commission may either submit the rule for filing with the Publisher under Ind. Code § 4-22-2-35 or elect the procedure for readoption under Ind. Code § 4-22-2. It is recommended that the Commission approve for readoption 312 IAC 16, without amendment, for subsequent filing with the Publisher.

Dated: February 17, 2010

Sandra L. Jensen
Hearing Officer